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THE RIGHT OF WOMEN TO, AND THE RIGHT TO HAVE WOMEN, SERVE ON JURY

In the case of State v. Mittle (113 S. E. 336), the defendant appealed from a conviction on the ground that there was error in refusing his motion to quash the venire of jurors on the ground that all women electors were excluded from the jury box. The Supreme Court of South Carolina held, first, that the Nineteenth Amendment did not confer the right of suffrage upon women, and secondly, that in any case it did not *per se* entitle them to the right to jury service. Moreover, the Court held that the defendant could not raise the question of exclusion of women from the jury lists, as he did not belong to the excluded class.

In its opinion, the Court says that it is a popular but a mistaken conception that the amendment confers upon women the right to vote. "It only prohibits discrimination against them on account of their sex in legislation prescribing the qualifications of suffrage, a very different thing from conferring the right to vote, which is left to legislative enactment, restrained only by the inhibition against the prescribed discrimination."

The Court then goes on to say:

"The Nineteenth Amendment is in the precise terms of the Fifteenth, with the substitution of the word 'sex' for the words 'race, color or previous condition of servitude.' It has been repeatedly held by the Supreme Court of the United States that the Fifteenth Amendment does not confer upon colored men the right of suffrage; it only forbids discrimination (United States v. Reese, 92 U. S., 214, 23 L. Ed., 563. See other authorities cited in 9 Rose's Notes, p. 56). The Nineteenth Amendment must, of course, receive the same construction. If, therefore, the privilege of jury service can be implied from the right of suffrage, which we deny, it could not be claimed as a constitutional right unless the right from which it is derived is conferred by the Constitution.

"Can it be said that the right to jury service is implied from the grant of the right of suffrage, assuming that the effect of the amendment is to confer that right?

"The right to vote and eligibility to jury service are subjects of such diverse characteristics and demanding such different regulations that it is impossible to consider the one as implied in the other. To hold that one who is a qualified elector is ipso facto entitled to jury service is to deprive the Legislature of the right to prescribe any other limitation upon the right to jury service. It could not prescribe the age limit, the sex, or the mental, moral or physical qualifications of a juror, matters which appeal so strongly to the judgment, in prescribing the fitness for their responsible duty, with due regard to the sensibilities and delicacy of feeling of those involved. * * *

"Not being implied in the Nineteenth Amendment the right of jury service by a woman is expressly denied by the State Constitution (Art. 5, Sec. 22), 'The petit jury of the Circuit Courts shall consist of twelve men.' The further provision in that section, 'Each juror must be a qualified elector', does not confer upon every elector, male or female, the right to jury service. It means that every juror must be a qualified elector, not that every qualified elector shall be a qualified juror.

"It is understood that our discussion and decision is limited to a construction of the Nineteenth Amendment. The effect of the Fourteenth Amendment upon a similar contention raised by a woman upon trial is not intended to be decided."

Under the Fourteenth Amendment it has been held that a person on trial has the right that in the selection of the jury persons of his race or color shall not be discriminated against or excluded on that account (Ex parte Virginia, 100 U. S., 313). Since the Fourteenth Amendment, however, does not prohibit a discrimination because of sex, it has previously been held that a State could exclude women from juries (McKinney v. State, 3 Wyo., 719).

NOTES OF IMPORTANT DECISIONS

COLLECTOR IN SCOPE OF EMPLOYMENT IN COMMITTING TRESPASS.—One employed to make collections under installment contracts was held, by the Supreme Court of North Carolina, in Wilson v. Singer Sewing Mach. Co., 113 S. E. 508, to be acting in the course of his employment in cursing the plaintiff, throwing her property on the floor, and attempting forcibly to take a sewing machine, because payments thereon were not made.

"A very similar case to this was State v. Goode, 130 N. C. 651, 41 S. E. 3, where the white agent attempted by violence to take furniture which had been sold to a colored woman on the installment plan. In that case, as in this, the woman asked the agent to return when her husband got back that night, and she would pay; but in that case, as in this, he demanded immediate payment and attempted to take the property by force. The woman resisted and a tussle ensued. There was this difference—that the agent in that case got the worst of the contest, as the woman used a baseball bat on his head, and the agent indicted the woman for assault and battery. The facts as set out in that case are amusing and interesting. Upon them the presiding judge at the trial told the jury that the defendant was upon her own testimony guilty of using excessive force on the prosecuting witness, and instructed the jury to find the defendant guilty. This Court gave a new trial, for that whether there was excessive force was a question for the jury, and not for the Court, and in the opinion discusses practically the same questions that arise here, though the position of the parties was reversed; the agent there having received more pummeling than pense, and the woman being indicted, instead of, as in this case, bringing her action for assault and battery and trespass."

EMPLOYEE INJURED GETTING OFF SCAFFOLD AT END OF DAY ENTITLED TO COMPENSATION.—An inexperienced employee, getting off a scaffold at the end of his day's work, after he had seen a co-employee safely descend by means of a rope suspended from the scaffold, was injured in his attempt to descend in the same way. Held, in Jobst v. Industrial Commission, 136 N. E. 493, decided by the Supreme Court of Illinois, that the injury arose out of his employment, and that such attempt did not amount to a willful intention to injure himself, within the Workmen's Compensation Act. In part, the Court said:

"The question in this case is, What was Waible doing at the time he was injured? not, How was he doing it? It must be conceded that he was acting within the scope of his employment when he was getting off the scaffold at the end of the day's work. Theretofore the scaffold had been raised or lowered, as the case might be, so that he could climb through a window and descend by a stairway. This would have been the safer method to have adopted, and it is not likely that he would have been injured, if he had left the scaffold in the customary way. He says that after Headley left him on the scaffold he became frightened, and that he did not know any other way to descend than to follow Headley down the rope. He had seen Headley land safely, and it cannot be said that his attempt to descend by the same method amounted to a willful intention to injure himself. Awards in similar cases have been affirmed in other jurisdictions. Clem v. Chalmers Motor Co., 178 Mich. 340, 144 N. W. 848, L. R. A. 1916A, 352; Keyser v. Burdick & Co., 4 B. W. C. C. 87. Under the authorities we think it clear that the injury arose out of the employment, and that the award of the Industrial Commission should be sustained."

LOSS OF CONTRACT DUE TO WRONGFUL EJECTION FROM TRAIN NOT ELEMENT OF DAMAGES.—The plaintiff brought suit to recover damages for wrongful ejection by defendant from one of its passenger trains. It appeared that he was on his way to a distant town to employ and gather together men for a lumber company with which he had a contract, and that by failure to fulfill his engagement with the men he lost his contract. It was held by the Supreme Court of North Carolina in Johnson v. Atlantic Coast Line R. Co., 113 S. E. 606, that damages for loss of such contract could not be recovered, as they did not ordinarily or naturally flow from the wrongful act of the carrier, nor were they within the reasonable contemplation of the parties.

The question as to the measure of damages, in cases of this kind, has been much discussed by this Court in several cases, and the law thoroughly settled.

The Court said in Lee v. I M. & S. Railroad Co., 136 N. C 533, 535, 48 S. E.809:

"It is immaterial whether we treat the cause of action as for a breach of contract or for a negligent omission to perform a public duty arising out of a contract (of carriage). The damages in either case are confined to such as were reasonably within the contemplation of the parties when the contract was made by which the duty to the plaintiffs was assumed."

And the present Chief Justice says in Kennon v. Telegraph Co., 126 N. C. 232, 35 S. E. 468:

"It is immaterial under our system of practice whether the action is in tort for the negligence in the discharge of a public duty, or for breach of contract for prompt delivery, for the recovery in either case is compensation for the injury done the plaintiff, and which was reasonably in contemplation of the parties as the natural result of the breach of the contract or default in discharging the duty undertaken."

LAW ENFORCEMENT*

By Judge J. C. Hutcheson, Jr.,
of Houston, Texas

THE LAWYER

Whatever may be the feelings of pleasure or of perturbation which attend a lawyer when he rises to address a body of laymen, the fact is well established, as all of you can testify, that when a lawyer rises to address a body of lawyers, and has both the opening and the closing, his sense of pleasure in the action, while fed by many streams and rising from many sources, is uniform and unmixed.

When the speaker is not only a lawyer, but has the added attribute of judge, a part of whose function it is to sit with groanings that cannot be uttered through long dissertations and exhortations, he in contemplation of the pleasure before him, feels like saying his "nunc dimittis".

I have long entertained the private opinion, and have often expressed it publicly, that lawyers are the salt of the earth. My experience on the bench has not caused me to change that opinion, though I have come to think the salt is of the dry variety.

I freely admit that if government and law is to be viewed from the standpoint respectively of tyranny and of the expressed will of the tyrant; that if the enforcement of legal rights as between individuals and as between individuals and the state, is looked on as desirably attained by might and the rule of force, the lawyer, instead of being a worthy, is indeed an unworthy member of society, and the view of Napoleon and other tyrants, that the best of all laws would be a law abolishing lawyers, is just and well founded.

But if the rights of individuals as between each other, and as between themselves and the state, are viewed from the standpoint of their determination and adjustment upon principles of right and justice by a fair hearing and due process of the law of the land, the upright, the honorable, the courageous lawyer must be regarded as the most desirable of citizens, and that person whom a free country can least do without.

And nowhere has the lawyer been more conspicuous for his service to liberty than in America.

It was Alexander Hamilton, who, anticipating by nearly half a century the victory of Erskine and of Fox for the freedown of the press in England; in 1732 secured the acquittal of Peter Zinger, the publisher of the New York Weekly, indicted through the influence of Governor Cosby for criminal libel, and while there is none of us who would deny that the American lawyer is a direct descendant, spiritually and perhaps in most cases, lineally, from the English lawyer, we cannot forbear to point with pride to the fact that we have worthily kept up the traditions of those great freemen.

It was the lawyer who secured the enactment and the enforcement of the great writs of right of English law, and it was the lawyer who secured the adoption of them into our constitution.

In England it was John Hampden, the lawyer, who not because of the amount, but because of the principle, fought against the ship money tax imposed without the consent of Parliament so vigorously and so well, that though he lost his cause before the royal judges, his defense of the legal rights of the subject cost King Charles his head, and has made Hampden's name enduring in English history.

In the same spirit, and sustained by the same love of liberty, and of devotion to the law, it was James Otis, the lawyer, who in Boston resisted another English king in such an eloquent and vigorous way that John Adams has declared that in Otis' speech the Revolution was born.

*An address delivered at meeting of Texas Bar Association, Fort Worth, Texas, July 5, 1922.

It was to the lawyer that Bushell, one of the jurors fined by the judge in 1670 for bringing in a verdict of acquittal in the case of Penn and Mead, applied to sue out for him a writ of habeas corpus, and it was this lawyer, who grounding his case on the proposition that Magna Charta guaranteed a jury trial, and that for the judges to fine a jury for bringing in a verdict contrary to the evidence would make a jury trial a mockery, secured the granting of his writ and the release of Bushel; so "that from that time forth the invaluable doctrine that the jury in the discharge of their duty, are responsible only to God and their consciences" has never been shaken or impeached.

And so we might go on with illustration upon illustration of the truth that the courageous and able lawyer, in the defense of his personal client, is at once the guardian of the established rights and the apostle of the enlargement of those rights, for all mankind.

When, therefore, I come before an audience of lawyers to discuss law enforcement, I do so with the feeling that there is no body of men more interested in the subject, none more capable of understanding its correct expression none more willing to co-operate in its establishment and maintenance.

Let me, then, invite your attention for as long a space of time as the program and your patience will permit, to a consideration of the true meaning of the term "law enforcement" which is passing current now on every lip, and most often with a wholly improper meaning, and to the true ideal with reference to it to which our society should aim.

GROUP PROPAGANDA AND ACTIVITY

In no country and in no period of time in the entire history of mankind has public opinion been so influenced, so moulded, and so aroused by the printed word as in this country and at this time.

There was a time when the orator, by the use of the spoken word, conveyed his message and brought about his ends. Today, the orator might speak on every stump in the land, but if the newspapers did not spread his views, comment on his views, pick up and carry on the street gossip of reaction to his views, the public in general would move on as little affected by his speech as though he had retired to the inmost recesses and there broken its remote silence by sibilant whispers.

Today the great channel and current of public opinion is the press, and whether for good or bad it is the habit of the general public to accept what the press gives it, and to largely form and fix its views thereon.

Now, if men spoke or talked with the tongues of angels, and only what they believed was for the general good; if this were not an age of propaganda, and more especially of group propaganda, only good could come of the widest dissemination in the press of all such views. But this is the age of propaganda by newspapers, not only of the merits of articles advertised in space bought and paid for, but of the views, the wishes, the demands, the hopes, and sometimes the frenzies of groups and organizations, cliques and clans.

I am only stating what the rest of you know when I say that the real and the grave peril confronts us of having the fundamental character of our laws and institutions falsely construed and interpreted by group propaganda, and so attractively put and so widely disseminated, as often to bring about the subordination of orderly ideas to the passionate effort to promote the accomplishment of a particular end, and whether that end be in itself good or bad.

There was a time, and not so long ago, when the worth of an individual to his community and to his state was measured by his own uprightness, character, knowledge, energy and ability. There was a time that when such a man announced for public favor, or undertook to draw to his support the public interest, he relied upon the

judgment of his fellows as to his particular worth.

Today we are confronted with the pitiful spectacle of men running for office which they intend to individually hold, and theoretically on behalf of the whole people from Senator of the United States to constable of the precinct, announcing in their written and printed documents, "I am a member of the Knights of Pythias, the Woodmen of the World, the Moose, the Elks, etc., etc.—and where the candidate thinks that there are not many fractional Americans, but that "one hundred per centers" mainly abound, he announces himself also a member of the Ku Klux Klan.

In addition, on every hand we see group effort, labor organizations, anti-saloon leagues, Purity leagues, farmers' blocs, various trades and merchants associations, societies for the prevention of prohibitions, leagues for social justice, and others too numerous to mention, each of which undertakes to speak not for or with the authority of the individual voter, or even the mass of individual voters, but for and with the authority of its bloc, its league, its clique, or its clan.

Each of these bodies is devoted to the achievement of some particular end or aim, and most of them are the true spiritual descendants of the ancient Jesuit, and particularly of his reputed creed, "The end justifies the means".

One thing they all have in common, partisan rather than American zeal, and one method is common to them all, propaganda.

Now the effective use of propaganda requires an attractive slogan, and the effort of each of these bodies is to select for its slogan some word, phrase, or idea which commands general acceptation. This selected, they hope by the constant association of that idea with their particular hobby, to rally to their standard all those to whom their slogan makes general appeal.

LAW ENFORCEMENT AS SEEN BY PROPAGANDISTS

One of these terms which has been seized upon by various bodies is "law enforcement", and each has sought to give it the narrow meaning that any one who violates the particular statute that the particular body has constituted itself guardian of, shall be punished for that violation, in some way or some how, though every law and every principle underlying law enforcement, be violated in the act.

I was amused the other day to read in the papers, at the very time when in open defiance of law, of government and of civilization in one of the counties of Texas mobs were slaying and burning their victims, the announcement of an amiable gentleman who was attending a "*law enforcement*" meeting in that vicinity, that everything was all right and the country safe.

Nor was any less ridiculous the solemn proclamation of the Mexia Ku Klux Klan, as reported in the papers, that if the courts could not keep the town straight, they would in their own way and by their own methods, do so.

The activities of these law nullifiers who prefer lawlessness to the ordinary procedure of courts, while a serious reflection upon a law-abiding people, and a sad commentary on our immediate times, are sporadic and ephemeral, and are mentioned by me merely to point a moral and adorn my tale.

The real menace to the institutions of our country will be found in the efforts of those who, in the name of law enforcement, seek through executive usurpation, legislative enactment, or improper attempts to influence and direct the course of justice in the courts themselves; to encroach upon and nullify the fundamental right of a free people to due process of law; which in its last analysis, is a fair and impartial hearing before a properly constituted tribunal, and in accordance with principles laid down and established therefor.

And so I have come here at this time, when propagandists of all kinds are pressing for this advantage and that advantage over the average American, when so many and such "unco guid" men are trying to mask meanness and self and group interest under the guise of public virtue, to discuss with you the true meaning of "law enforcement", and to adjure you, in season and out of season, to insist upon its preservation.

I will say nothing about the open defiance of the courts which the papers attribute to labor unions and such bodies, in the statement that they will not obey the lawful orders of the courts. I have no fear on that score whatever. It has never been the case, except in times of revolution or martial law, that the mandates of the courts, backed as they are by every power available to the executive, have ever been successfully evaded or escaped.

Such positions, where taken, are unwise, unpatriotic, and greatly to be regretted for their tendency to break the country into groups; but they will no more rock, or even shake, the fabric of our constitutional foundation than can a gentle breeze shake the foundations of this building where we gather. Open defiance of and refusal to obey constituted authority is only important when it is powerful enough to bring about revolution; if that point is reached, the maxim "inter leges arma silent" arises, lawyers become soldiers, the sword determines the right, and the lawyer will be found in the ranks of those who by the sword will vindicate the just powers of government.

LAW ENFORCEMENT, ITS TRUE MEANING

It is high time that we should for a little while examine and restate for ourselves, and for the public, the true meaning of this phrase.

What does the term truly and properly mean? Where is its origin to be found? What are its sanctions, and what its proper methods?

Fundamentally, as we all know, there can be no organized government without law; that which in its most general abstract sense is defined as the will of the superior, which the inferior is bound to obey.

Law, in its broadest and completest sense is that rule, obedience to which is enjoined upon those who live within its sphere, and disobedience of which is, or should be, followed by some penalty. But this definition, while satisfying abstract theories of law, in no manner sufficiently presents the true conception of the municipal law under which we in these United States live and operate, and for that definition we must make another distinction.

As applied to ordinary society like our own, law is that body of custom or practice which by long sanction and usage, has been recognized, or by legislative enactment has been declared, to be the basis upon which the rights of individuals are determined, while criminal law, as it is mainly practiced in these United States, consists exclusively of that body of law enacted by some law-making authority, prescribing rules of conduct and denouncing penalties for their disobedience.

If we had only substantive law, declaring rights, denouncing offenses and fixing penalties, without any means for their enforcement, we should not be wholly unable to function, for with Burns—

"I'll no say men are villains a':
The real hardened wicked
Who hae nae check but human law,
Are to a few restricted."

and if mankind on the average, and by and large as we see it and know it in this country knows what is law, and what is right, they will in the main, undertake to govern themselves accordingly.

The lines, however, with which Burns concludes that stanza are equally true:

"But och! Mankind are unco weak,
And little to be trusted;
If self the wavering balance shake,
It's rarely right adjusted."

so that as a part of the fundamental constitution of any country or of the organization of that country, if it has no written

constitution, provision is made not merely for the enactment of its substantive laws, the expression of the rights of the individual and the state, but for the assertion and protection of those rights as between individuals, and between the individual and society.

Such provision itself is law and as much a part of the legal system as the substantive laws, and in some respects the greater and the fundamental part of those laws, since if the system by which the laws are enforced is defiled or polluted, the stream of enforcement must itself be fouled, and far greater harm comes to the citizen and the state than for a particular cause to be wrongly decided, or a particular individual escape justice.

When, then, we speak of law enforcement, we mean the operation of all that body of procedural machinery by which the substantive or positive law is enforced. It is therefore not figuratively, but absolutely true that the exaction of the penalties pronounced by substantive law in any other way than by adherence to and by means of procedural law is not law enforcement, but law violation.

This is true in every country which operates under any organized government, while in this country where the significent thing about the oath of allegiance is that we take no allegiance whatever to any individual or set of individuals, but only to support and defend the Constitution and the laws, it is particularly true.

IMPROPER TO ENFORCE OR CHANGE LAW EXCEPT BY LAWFUL METHODS

It is therefore then of paramount importance that those who talk of law enforcement, and those who undertake to bring about law enforcement, shall themselves proceed in accordance with the law.

Neither the subject nor the occasion suggests or permits a discussion by me of the merits or the demerits of any particular substantive law, as to whether it is right or wrong, just or unjust, wise or unwise; nor of any procedural law. But it is in line for me to say that while under the form of government which we have it is the right of every citizen to work along lawful lines to amend the law of substance or the law of procedure, and in accordance with the Constitution to amend the Constitution itself, there is no excuse whatever for any citizen to refuse obedience to or set aside, while still in force, any part of the Constitution or laws because he does not like it.

And let me observe here that this applies to the Volstead Act as fully and completely today as to any other law. For not only I, but all of us are committed, both by the rulings and opinions of other courts, as well as of that over which I preside, to the view that some to the contrary notwithstanding, the Eighteenth Amendment is being constitutionally applied through the medium of Mr. Volstead's invention; though I must admit that up to this time, I alone, of all the judicial prophets, have announced my concurence in the poet's view that "the Lord is on the ocean as well as on the land", and that not only the Constitution, but the Eighteenth Amendment to it is amphibian and follows the flag on the seven seas.

Nor is there any excuse for those who are impatient of any particular law, whether of substance or procedure, to in private and illegal ways set up for themselves codes of procedure or of substance and avoid or circumvent established and valid law.

For it is far more destructive of constituted and orderly government, and a far greater step toward anarchy for persons to in groups and by blocs or masses openly defy and trample underfoot the procedure established by law, than that offenders against the substantive laws of government daily escape punishment.

It is more dangerous still to government if those charged with the enforcement of law, either in the executive or in

the judicial branch, lay violent hands upon the Ark of the Covenant set up for the protection of the people, and in the name of law refuse to recognize and obey the limitations and restrictions of law.

That I am stating a mere truism is known to every lawyer here. That it is not known to, and accepted by the public generally is to some extent due to their lack of opportunity to know and understand the processes of our government, but far more largely due to the asphyxiating influence of the clouds of poison gas which group after group is spreading over this country, and this misinformation is not the least dangerous because many so-called good men, in ignorance of the fundamental principles of government, are lending their names to the propaganda.

DUTY OF LAWYERS TO MEET PROPAGANDA WITH INFORMATION

I have therefore seized this opportunity to suggest to this body of lawyers, in an earnest and serious way, that as lawyers we are to some extent to blame for not meeting propaganda with information and that we ought to take counsel of the Scriptural saying that the sons of Mammon are wiser in their day and generation than the children of Light, and by following their copy do a little advertising of the proper kind, so that the people would more truly understand what law enforcement means, and that in it lies not only the salvation of the state, but also of the individual.

I have come before you to express in a serious and earnest way my conviction that a large part of the present serious condition of the propaganda against law enforcement machinery of this government, the violation of procedural methods, and the general tendency of groups or organizations to counsel resort to violence, and the taking of the law into their own hands, is traceable in large part to the fact that the lawyers, who are the guardians of the Temple of Law, have by their inaction, helped to put the institutions of the law into the position described by the Saviour when He said: "The Kingdom of Heaven suffereth violence, and men of violence take it by force."

Lawyers are quick when the loss of liberty is imminent, to rise to its defense. It was Burke, who in his great speech on "Conciliation" said of the colonists:

"In no country in the world is the law so general a study. The profession itself is numerous and powerful, and in most provinces it takes the lead. This study of the law renders men acute, inquisitive, dexterous, prompt in attack, ready in defense, full of resources. In other countries the people, more simple and of a less mercurial cast, judge of an ill principle in government only by actual grievance. Here they anticipate the evil, and judge of the pressure of the grievance by the badness of the principle. They augur misgovernment at a distance, and snuff the approach of tyranny in every tainted breeze."

The time is now instant, not far away, when it is the duty of lawyers to actively and vigorously defend the Constitution and laws of their country against its domestic enemies, with that eternal vigilance which is the price of liberty. *There is a tremendous current setting in, which on its tides may sweep the American citizen away from that conception of the priceless-ness of his individuality which it was the purpose of this government to establish and achieve.*

For the surest way to finally break down and destroy that sturdy manhood which is the birthright of the real American citizen, is to permit the erection of a group or groups which shall be more vigorous than the government itself, and shall invest themselves with the power, directly or indirectly, to set aside the ordinary processes of the law, and to deny to any citizen the equal protection of the laws.

DUTY OF LAWYERS TO ABSTAIN FROM GROUP MEMBERSHIP

I would have no fear of the future of this country if I were sure that the lawyers, pledged as they are to the death itself to the maintenance and the sanctity of law enforcement, would hold themselves

aloof from every group movement and group activity which either in purpose or in action, tends toward defiance of or contempt for, established law.

A lawyer may with all propriety be a prohibitionist, or an anti-prohibitionist, a labor unionist or an anti-labor unionist, an anti-saloon leaguer or a member of the society for the prevention of prohibitions, or for that matter, a member of any other organization which in lawful ways tends to bring about the realization of group ideas, so long as this membership is in subordination to their real allegiance to the general good and the law of the land.

But no lawyer has a right, in his zeal for any group or movement to advocate or by his silence countenance any theory which puts the interest of his group or any member of it, above the common good, especially when this is done by violating the ordinary process of law enforcement. If he does so, he has betrayed the Temple of Justice, and for a Judas price.

THE CHECKS AND BALANCES UPON THE EXECUTIVE AND THE JUDICIAL BRANCHES, BOTH OF WHOM MUST OBEY THE LAW

Let us reflect for a moment, then, upon the construction of the judicial and the executive branches of our government, by whose combined efforts our laws are enforced.

The briefest thought on the subject will show that while as I have said, it is happily so that the great majority of the people of the United States are law abiding, and only want to know what the law is in order to obey, there are people who will violate the law, both civil and criminal; who will trespass upon the rights of others, and upon the rights of the state, and that for the protection of the rights of individuals, and the rights of society tribunals are created, before which in legal form and manner all litigants must come, and this whether the cause be civil or criminal, to be tried by the course of the law of the land.

We are all familiar with the general statement of the functions of the three branches of government under our system; that the legislative enacts the laws; the judicial interprets the laws, and the executive enforces them. But this statement is very misleading, not only because of its meagerness, but because of the fact that it falls only a little short of a misstatement of the truth.

With that definition only for a guide, it is no wonder that the grossest misconception of the functions, powers and proper scope of activity of the judicial and executive exists in the minds not only of the public, but of subordinate officers of the executive, charged with a duty with reference to law enforcement.

That definition assumes for the executive unrestricted power to put laws in force, and to exact compliance with them, whereas generally speaking, the fact is that the arm of the executive which has been under mere executive authority exerted against a citizen *falls palsied at its side, when the feeblest citizen invokes the protection, through the judicial branch, of the law of the land.*

Of such stuff is due process made that a freeman, who knows his rights, and knowing, dares maintain them, swells to the statue of a giant under its aegis, and princes and potentates, governments and executives, shrink into insignificence.

We know that the agents of the executive, when that executive is a monarch, cannot be trusted with the rights of a citizen, and our ancestors, knowing human nature, knew that the name under which authority was exercised was immaterial; that the substance was the thing. That it was the nature of mankind to claim authority, and of authority to clothe itself in the habiliments of the absolute, and they, under the guidance of profound wisdom, provided a system of law enforcement which insured to each citizen his rightful access to an impartial tribunal, and thereby the fullest development of the greatest system

of law the world has ever seen, the *cardinal point of which is,* whether it be a civil or a criminal cause, *the decision of it, and the law governing it, is not made by a body which is at all concerned in the making of the law, or in its general application or effect, but which is concerned only with the particular law in question as it applies to or affects the particular citizen in question.*

THE COURTS THE CITIES OF REFUGE AGAINST WRONG

Such a system insures to each individual, no matter how humble, the absolute right to enter the Temple of Justice, in the full stature of a man, and there to have his rights determined.

He does not enter, as in the approach to the legislative or the executive branch, with his access conferred by grace, and with his rights to be accorded or withheld at pleasure.

So it is that it is the courts, including in the term the grand jury, the judge and the petit jury, which in the last analysis are the citadels of the free man. It is in the courts that, ever waiting his demands, are the sword and buckler of eternal justice. It is in the courts that the triumphal tread of the overbearing becomes the subdued step of the chastened.

It is the glory of the lawyer, in times past, that he has dared to speak for liberty when every other voice was silent, and it is the glory of the Anglo Saxon courts that neither principalities nor powers, nor life, nor death, nor things present nor things to come have been able to turn the humblest righteous litigant empty handed from her temples.

And so when we lawyers speak of law enforcement, we should speak not as the ignorant do, of the activities of peace officers merely, but of that whole machinery of justice present in the courts in whose keeping rests the ark of the covenant of the Constitution, the ultimate protection and safety of the citizen.

DANGER FROM HIGH-HANDED PEACE OFFICERS

How poorly the lawyer has done his work in keeping the general public informed of its rights, and the machinery for the law's enforcement is illustrated by the reference in popular speech to peace officers as "the law". If any of you have had experience in criminal cases, and I had none until I went on the bench, you have, as I have, often heard in the trial of a criminal case, a witness say, "At such and such a time the 'law' came in".

Now this is not a correct conception. This officer of the law is not the law. He is a mere agent of the law, a worthy man indeed when he acts worthily, but only worthy when he recognizes that he is most rigidly himself bound to observe the law.

It is true, and pity 'tis, 'tis true, that many men when they get commissions as peace officers, feeling the clink of the six-shooter as they strut down the streets, regard themselves as both the law and the prophets, and resent like every tyrant does, the limitations placed by law upon their activities. And while I know many men who are humane, responsible and in all respects law-abiding officers, it is a matter of common knowledge to all of you, and of particular knowledge to me through my experience as mayor and judge, that if it were not for the constant vigilance of the courts, the constitutional guaranties of the citizen, especially if he is poor, of an inferior race, or ignorant of his rights would never be afforded him.

And so we see that law enforcement as it concerns the executive, requires procedure in accordance with law, and the observance by it of the restrictions and regulations imposed by law, and that it is the duty of the lawyer not merely, nor even mainly, for a particular client, but everywhere, and at all times, to emphasize this fundamental point, that the executive must remember the rights of the citizen, and cannot abridge them except in the ordinary manner and to the extent allowed by law.

But as we have seen, it is not only the executive which must act in conformity with the law; the courts themselves are strictly bound to follow and observe it.

SOURCES OF DANGER TO THE INDEPENDENCE OF COURTS

Let us turn, then, for a moment to the courts, and briefly examine what are the fundamental requirements of law enforcement there, and what the dangers which the times present.

There was a time, and not long since, when the cry went up that the courts were being influenced by corrupt men, and men of evil purpose, by rich men, and men of capital.

Whether that was true or not at any time it certainly is not true today, but the danger now springs from another source.

That danger lies in the fact that in the present state of the popular mind courts will be approached directly or indirectly through propaganda and their independence threatened, by men or groups representing what are claimed to be moral theories, or social theories whose influence is more dangerous far than that of bad men because more subtle, and because, masking a selfish or group purpose in the guise of goodness, they are able to make a closer and more insidious approach to the Temple, and their attempt at influence cannot be so indignantly repelled.

In the last few years the federal courts have in bold and vigorous terms asserted and protected the citizen from every species of tyranny at the hands of petty executive officers, and not the least of this service has been the insistence upon the observance of the constitutional protection against unwarranted search and seizures.

You who have had no experience with criminal cases, and most of you here are in that class, can have no conception of the personal resentment toward and contempt for these constitutional safeguards, which all but the seasoned and judgmatic officers feel, and I daily thank the Lord of Hosts that there are courts in this country where the humblest citizen under the shield and buckler of the law is as powerful as the greatest nation upon earth.

The efforts at violation of the rights of citizens the courts early checked, though not without great difficulty, and now Congress has in definite terms made it an offense to enter a private house without a warrant, and I am glad to say for the force of prohibition and other agents working in my district, that there seems to be a genuine effort to themselves fully obey the laws in bringing others to account for violations.

Another direction in which there has been an effort by group propaganda to deprive the defendant of a fair trial has been in the matter of the imposition of sentences.

Among lawyers it goes without saying, for instance, that where a federal law gives discretion to the judge so as to make the punishment fit not the crime, but the offender, it would be a gross impropriety for persons interested generally in securing light sentences for such cases to try to influence the judge to a *settled policy* in that direction; yet it seems to be assumed by many supposedly good men and newspapers that the discretion which under his oath the judge is bound to exercise as to each individual prisoner, may be with propriety controlled by general advice to or a request of the judge for a *policy* of maximum sentences.

From what I have said so far it might be implied that I was unmindful of those two great institutions for the protection of the citizen, and the enforcement of law, the grand jury and the petit jury.

For the grand jury I will only say that it is sufficient to remind you lawyers that it came into being in its present form not mainly as the agent of the king, but as a check upon him, for the protection of the citizen against unjust and unfounded prosecutions; and that it was adopted into the federal and state constitutions and stands there and is maintained today as a

protection for the citizen against not only executive tyranny, but malicious and unjust private accusation.

It is the insidious approach to the Temple, the boring from within, the pretense that action is taken in the interest of and not against the government, the use of the machinery of justice by taking hold of and corrupting it, that constitutes the danger to our institutions, and I turn my attention now to the last and final guarantee not only of individual liberty, but of the power of the state to protect itself and function without resorting to arms, the petit jury.

THE JURY SYSTEM

There are those who believe the jury system outworn, and that matters could be better decided if submitted to trained minds regularly employed to hear and determine cases. I have read some and heard more along that line.

My own experience both as a practitioner and as a judge convinces me that in civil matters, which are not technical and abstruse, it is in the long run more satisfactory to submit the contested issue of simple as opposed to complex questions of fact, for jury determination, and while I have no experience as a criminal practitioner, my experience on the bench shows me that in criminal felonies the verdict of the jury is the most satisfactory way to dispose of the issues joined.

These views, of course, based upon the maintenance of the jury system and jury service on the basis of individual integrity and conscience on which it now rests, together with the most emphatic affirmation that if the *individual juror* will not discharge his duties as an individual pledged by his conscience to do impartial right according to the law and the evidence properly adduced before him, then is our jury system indeed a failure, and our hope in it vain.

There is not a man in this audience who in a matter of supreme importance to himself, would not prefer to trust his case to an unbiased and intelligent jury for a trial according to the law of the land, the fundamental principle of which, as to juries, is that each juror shall act without bias, and uninfluenced, except by the evidence regularly introduced before him, and the law as given in the charge.

MENACES TO A FAIR TRIAL BY JURY

I think it must be affirmed, however, that the influences which were adverted to in the beginning of this address, present a most serious menace to the maintenance of these two essentials, and that public attention should be called, both by the courts and by the lawyers, to the sources of this menace.

Of course, the most serious attack comes through the wide-spread tendency already amongst our people to be joiners, and the deplorable tendency to put loyalty to such groups, orders or societies, and their interests, ahead of other considerations, sometimes it seems even of honor.

First—Tendency of Groups to Control Men's Actions Even When on Juries

There are many men whom I would be willing to take on a jury where their personal interests might be collaterally involved, whom if the controversy involved the interests or could be influenced by the views of the groups or organizations to which they belonged, I would never take on the jury knowing that their obligations to their groups and the large accountability they might feel themselves under to explain their verdict to such groups, would sway their judgment and influence their verdict.

With the widespread and spreading habit of joining up, it is becoming increasingly difficult in cases of large interest, or which are even collaterally connected with matters of public or group concern, to find men who are not predisposed by some affiliation with a group or organization toward a particular solution of a question, and therefore not in a mental condition to give a fair trial.

This difficulty is as deep-seated as human interest, and is surmountable only upon considerations of personal honor, and it is the duty not only of lawyers, newspapers and the public generally, but of particular organizations, to make it a part of their teachings and instructions, that when an individual enters upon the high office of a juror, he must put aside every predisposition toward his group or class and determine the facts presented to him in accordance with truth and honor.

Second—Trial by Newspapers

The other menace which never arises in ordinary controversies where public interest is not engaged, is the menace of the creation of opinion with reference to the case by newspapers and public concourse; the latter manifesting itself in the crowds in attendance upon the sessions of court as though a circus was being conducted, and the creation by them of a sense strong, though impalpable, of sympathy for or hostility to the defendant, which gets into the air and permeates the deliberations of the court, guard against it as you will.

Jurors are but human beings, and there is an inevitable tendency on their part to react to the influences around them. I am always deeply sorry when I have to put on trial a case in which large public interest is engaged, especially since there seems to be a widespread, though clearly erroneous, impression on the part of the newspapers that they have a right, not only to report the testimony, but to report such incomplete parts of it as they think most interesting, together with their comments and views upon the course of the trial, their predictions as to its outcome, and worse than this, if anything could be worse, upon the course of a fair trial, they undertake to predict what evidence will be offered, often presenting in the newspapers under bold headlines, matters which by no possible theory could be legitimately introduced in evidence.

I am never afraid the jury in the federal court will be tampered with. I have too much respect for the jurors, for the quality of men who sit as jurors in that court, and I know that people in general have a wholesome respect for the court in which they sit. But I do fear the effect of newspaper reports and comments on cases on trial, nor am I alone in that fear.

In the New York Constitutional Convention of 1915 Chief Justice Taft said that the greatest evil and the most vicious one in New York State was that of trial by newspapers. He further said he would retain the necessity of unanimous consent by juries, "even if it were only to protect the defendant against one of the greatest evils, perhaps the most vicious one, arising in connection with criminal cases; trial by newspapers. In many instances the defendant is convicted in newspapers ahead of time, and the judge has the greatest difficulty in handling the case because of the atmosphere by which it has been surrounded from such newspaper publications.

"I think there should be the requirement of a unanimous verdict to offset this."

There is no question as to the authority of the court to punish for a deliberate perversion of the course of the trial, or a deliberate effort through the newspapers to get to the jury any matter which they should not know, or to influence the course of the trial or persuade the jury one way or the other, and the power of contempt existing in the court is ample to punish for these offenses.

I need only refer to the late case of Toledo Newspaper Co. v. United States, 247 U. S. 402. But the remedy ought not to come through punitive channels; it ought to come through the proper understanding by the newspapers of their obligations in such matters, and it is the duty of the lawyers and the courts to advise them not only of their rights, but which is a higher and better thing, of their obligations and their duties in the matter of the securing of a fair trial.

I have the greatest respect for the fourth estate. I concur most fully in what Judge Fisher of Cook County in his recent decision in the Chicago Tribune case so eloquently said, and I would beseech you lawyers to inform our brethren of the press of the difficulties which their actions create, and of how hard it is for a fair trial to proceed in the face of such newspaper action.

Justice Taft presented only one side of the argument when he called attention to the difficulty of giving a *defendant* a fair trial.

The side is the easiest to handle, for if in a criminal case improper matter is published in a newspaper, which would or would be inclined to influence a jury against a defendant, the judge would not hesitate to set the verdict aside, whereas, if as I find to be most often the case, these reports are full of sob stuff and sentiment, prophecies and predictions, tales of the past and future life of the defendant, and especially of his wife and children, and the effect of the reports are against the government, the court has no recourse whatever after the verdict of acquittal, and can only protect the government by declaring a mistrial and if he does this he will immediately find himself confronted on the next trial with a plea of former jeopardy, as the right to declare a mistrial in a criminal case after issue joined is a restricted one, and to be exercised only under strict limitations.

I need only mention a few of the trials of recent importance—the Obenchain-Burch and Arbuckle trials in California, the treason trial in West Virginia, the Cox trial in Houston, to illustrate my point, and I sincerely hope that such of the newspaper brethren who are here will take this advice to heart, and not because they have to, but because they want to, will use the utmost care in future in reporting trials not to influence those proceedings.

I cannot commend too strongly to both the members of the bar and our associates of the press the address of Rome G. Brown —"Some Points on the Law of the Press," reported in the Editor & Publisher, 63 Park Row, New York City, issues of May 27, June 3 and June 10, 1922, where this matter is ably and sympathetically treated.

Now what is the conclusion of this whole matter? That we should slavishly worship and apply without improvement or repair, the procedure which has been handed down to us? By all means most emphatically No.

DUTY OF LAWYER TO IMPROVE PROCEDURE BY ALWAYS TO RETAIN DUE PROCESS AND A FAIR TRIAL

The most casual examination of books on procedure in the last hundred years will show that there has been a tremendous progression not only in England, of which we hear so much, but in these United States toward simplicity, directness and truth, and it is the duty of the lawyers and the courts to be ever striving to reach that state in the administration of law enforcement machinery where we shall no longer see "As in a glass darkly, but face to face". But my adjuration is to proceed as St. Paul admonishes us, "Proving all things, holding fast to that which is good" which in this matter is the fundamental quality of due process and fair trial.

LAW ENFORCEMENT BY DUE PROCESS RESPONSIBLE FOR AMERICAN CHARACTER

For the characteristic quality of the original American, a characteristic which is in danger of being lost to us today, of whom it is said "he is one who knows his rights, and knowing, dares maintain them", sprang from the consciousness that law enforcement in this country does not depend upon the particular quality of the law, the particular group or class which has taken that law into its custody, or upon the caprice or whim or any person charged with any part of its enforcement, but upon the ordinary application of principles of law and fair dealing laid down

not for special cases, but for all the citizenry alike, which insures to him that priceless privilege of free men, a fair and impartial trial.

In this time of new theories and unrest, it is of the highest importance that this conception be maintained in its fullest vigor, for such must ever be the case if we justify the propheeies and hopes of our ancestors. Such must it ever be if we hope to provide the blessings of liberty and the pursuit of happiness for our posterity.

I believe that the Old Alcalde, Governor Roberts, if a little crudely certainly clearly, stated the profoundest principle of our government when he said, in answer to a demand for radical action on his part and a statement that if action was not taken Texas would go to hell: "Texas may go to hell while I am Governor, but if she does, she will go there according to the Constitution."

If there be those among us who believe that the ship of State under her present regulations, charts and rules of navigation is destined to and will ultimately reach that lake of brimstone which some call hell and others Tophet unless her course be changed, her regulations amended, her navigation bettered, let us adjure them to proceed at once and by orderly methods to make new rules and regulations, reverse the charts and change the compass, but for pity's sake not to slug the captain, put poison in the cook's galley, bank the fires and scuttle the ship.

Law enforcement—the serene and tranquil application of law to the rights of states and individuals, the most glorious conception of state founders, of state builders, of state preservers; law enforcement—under the aegis of which the humblest citizen rises to the stature of a giant against unjust accusation; law enforcement—the tree of life and liberty, under whose spreading branches are marshalled in peace and hope those whose rights but for that law would be trampled on and destroyed, whose enjoyment of liberty, whose hopes of happiness flourish under its umbrageous shade; law enforcement—the majestic disposition and settlement of human and social rights in an orderly and regular way, long may it be the test, the purpose, the hope, and the justification of our beloved country!

AUTOMOBILES—UNATTENDED IN HIGHWAY

ZANDAN v. RADNER

136 N. E. 387

Supreme Judicial Court of Massachusetts, Sept. 15, 1922

In action for injuries, caused by defendant's automobile, which for some reason started while unattended on the street, evidence held to raise a jury question as to defendant's negligence, though his testimony that he left the automobile with the engine at rest, spark lever shut off, and brake set, was not directly contradicted.

W. G. Brownson, of Springfield, for plaintiff.

Joseph F. Berry, of Hartford, Conn., and Frank J. McKay, of Holyoke, for defendant.

JENNEY, J. In the early evening of April 9, 1919, the defendant stopped his Ford automobile on Greenwood street in Springfield with its left side to the curb in front of his parents' home. Leaving it there unlighted, he entered the house, where he remained until after the accident, about one hour later. The plaintiff, who was upon the sidewalk of the same street and in the exercise of due care, was hit by the automobile. There was evidence that the car had no occupant at the time of the injury which occurred over 600 feet from where it had been left, the grade being slightly upward throughout this distance.

The defendant testified that he left the automobile with its engine at rest, the key used to turn on the ignition in the lock, the spark lever shut off, and the brakes set, and that the engine started only by cranking. There was no direct evidence to the contrary.

There was also evidence that the automobile, proceeding on the wrong side of the street with great speed, hit the plaintiff and then turned over. It was found with the "key in the lock and turned on, the spark lever on full, and the gas lever halfway on. The clutch was in neutral, slightly forward". A man was observed running away from the car at the scene of the accident.

The plaintiff's son testified that the defendant within a few days after the accident said in substance that it had been caused by his fault.

At the close of the evidence, the defendant moved that a verdict be directed in his favor, and excepted to the denial of the motion, which raised no question of variance between the declaration, specifications and evidence.

(1) The only other exception on which the defendant relies is to the admission of the testimony of an expert witness that the plaintiff's car could not have moved without the subsequent intervention of some person, unless the engine had been left running. This evidence was properly admitted. It related to the manner in which the vehicle could be put in operation and tended to prove that it could not start of itself unless the engine was running. In connection with other facts it might be considered as of some probative force.

In answer to special questions, the jury found that the defendant left the engine running and that the automobile was not started by a third person; they found for the plaintiff.

No objection was made or exception saved to the submission of the issues or the instructions given. If the defendant's motion for a directed verdict was rightly denied, the exceptions must be overruled.

It is unnecessary to consider whether the breach of the ordinance which forbade the stopping of any vehicle with its left side against the curb except on Market street, or the independent violation of G. L. c. 90, §§ 7, 13, leaving the automobile unlighted, can be considered as contributing to the accident.

(2,3) While there is grave doubt whether the evidence, apart from the admission of the defendant, justified a finding that the cause of the accident was not the subject of speculation or surmise, because there was no direct evidence that the engine was running when it was left, and as the intervention of some other cause was not excluded, we think that, taken as a whole, it was sufficient to warrant the submission to the jury of the issue of the defendant's negligence. The admission had probative force. Smith v. Palmer, 6 Cush. 513; Anderson v. Duckworth, 162 Mass. 251, 38 N. E. 510; Adams v. Swift, 172 Mass. 521, 52 N. E. 1068. It was more direct than the circumstantial evidence sometimes arising from conduct, for instance, where a defendant conveys all his property immediately after an accident with which his connection is proved by other evidence. Portland Gaslight Co. v. Ruud (Mass.), 136 N. E. 75, and cases cited. See also Egan v. Bowker, 5 Allen, 449; Hastings v. Stetson, 130 Mass. 76; Commonwealth v. Min Sing, 202 Mass. 121, 125, 88 N. E. 318.

Exceptions overruled.

NOTE—*Liability of Owner of Unattended Automobile Which Starts Into Motion Injuring Another.*—It is the duty of the owner of an automobile, leaving it unattended in the highway to use such care in doing so as a person of ordinary prudence would use in the circumstances. Failure to use such care, whereby the machine, by force of gravity, or by some other cause reasonably to be apprehended, gets under way and inflicts injury, renders the owner liable. American Express Co. v. Terry, 126 Md. 254, 94 Atl. 1026; Berry, Automobiles (3d ed.), Sections 222, 223.

The defendant left his automobile in a street where there was considerable grade descending in the direction in which the machine was headed. He testified that he had applied the emergency brake and cramped the front wheel against the curb before he left it. There was evidence for the plaintiff that, without anyone meddling with the automobile, it started by force of gravity down the street, acquired considerable speed, and collided with plaintiff, inflicting the injuries complained of. There was a directed verdict for the defendant, but on appeal this was reversed, the Court in part saying: "It seems plain, as shown by the evidence, that had the machine been properly secured, it would not, by the force of gravity alone, have started." Oberg v. Berg, 90 Wash. 435, 156 Pac. 391.

ITEMS OF PROFESSIONAL INTEREST

October 4, 1922.

Editor Central Law Journal,
Times Building,
St. Louis, Missouri:

Dear Sir—The note in your issue of September 29th on "Doing Business Within the State", brings to mind a notable case decided by the Appellate Division of the Supreme Court of New York December, 1919, Fleischmann Construction Co. v. Blauner's, 179 N. Y. S. 193. The opinion is by Mr. Justice Dowling, and the syllabus reads:

"Where foreign corporation, with retail department store in another State, regularly and systematically purchased merchandise in New York, and paid resident buyer therein to look up available merchandise, and where it's sole manager and 15 buyers made weekly trips to New York for purpose of buying goods, the contracts taking effect in New York, because signed therein by its sole manager, the corporation was doing business in New York."

I do not find that this decision has been reviewed by the Court of Appeals. I take it that it may be accepted as the law of New York and as such is of interest to the professional as a fact and as a precedent.

Yours very truly,

Denver, Colo. T. J. O'DONNELL.

WEEKLY DIGEST.

Weekly Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts.

Copy of Opinion in any case referred to in this Digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Agriculture**—Invitee.—The driver of a race horse entered for a race at an agricultural fair was an invitee, and not a mere licensee, in working out the horse before the race, where for 27 years with the full knowledge and acquiescence of the fair management it had been the custom for drivers to work out their horses before the races.—Hoyt v. Northern Maine Fair Ass'n, Me., 118 Atl. 290.

2. **Automobiles**—Passengers.—The negligence of the driver of an automobile in driving into an excavation in the street is not imputable to the passengers.—Schroeder v. Public Service Ry. Co., N. J., 118 Atl. 337.

3. **Bankruptcy**—State Law.—The question whether a particular transfer of property by a bankrupt is fraudulent, under Bankruptcy Act, § 70e (Comp. St. § 9654), must be determined by the laws of the State which govern the transaction in question.—Engstrom v. Lowell, U. S. C. C. A., 281 Fed. 973.

4. **Banks and Banking**—Agency.—Under a statute authorizing a bank in which a check is deposited for collection "to forward, en route, the same, without delay, in the usual commercial way in use according to the regular course of business of banks", a payee, who deposited check with a bank for collection, held entitled to sue other bank, to which the check was forwarded for collection by the first bank, for damages caused by negligence of the second bank in the course of collection, as against contention that there was no contractual relation between payee and second bank, since under such statute the second bank became the payee's subagent.—Malloy v. Federal Reserve Bank, U. S. D. C., 281 Fed. 997.

5.——Liability of Directors.—Because of the fiduciary relation between the directors of a trust company and its savings department, a suit in equity may be maintained to enforce the liability of the directors for neglect and mismanagement, and the remedy at law is not exclusive.—Cosmopolitan Trust Co. v. Mitchell, Mass., 136 N. E. 403.

6.——Savings Accounts.—Under Or. L. § 6220, amended by Laws 1921, p. 596, in case of insolvency of any bank with a savings department, the savings depositors have a first lien on assets of the savings department, and also share ratably with commercial depositors in the distribution of all other assets and resources of the bank.—Upham v. Bramwell, Ore., 209 Pac. 100.

7.——Stockholders' Liability.—G. L. c. 167, § 24, construed as authorizing the commissioner of banks to maintain an action for the full amount of the statutory liability of stockholders in trust companies on his own determination of the necessity therefor, does not violate any provision of Const. U. S. Amend. 14, or Const. Mass. Pt. 1, Art. 10, relative to the taking of private property for private use, etc., Article 11, relative to the right to a remedy for injuries or wrongs, Article 12, providing that no person shall be deprived of life, liberty, or property, but by the law of the land, etc., and Article 30, relative to the separation of the legislative, executive and judicial departments. Allen v. Prudential Trust Co., Mass., 136 N. E. 410.

8.——Transfer of Money.—Where plaintiff paid money to defendant bank for a cable transfer to a person in Poland, the bank did not become a bailee, who was required to send the identical money, nor was there any fiduciary or trust relation established between the parties, which would be cognizable in a court of equity, but the bank could use the money for its own purposes, pending performance of the agreement.—Safian v. Irving Nat. Bank, N. Y., 196 N. Y. S. 14.

9.——Warranty.—Where a national bank never owned notes transferred to plaintiff by its president, there was no basis for any claim of warranty by the bank with respect to such notes.—Sedgwick v. National Bank of Webb City, Mo., 243 S. W. 893.

10. **Bills and Notes**—Fraudulent Origination.—In an action on a note by plaintiff, claiming to be a bona fide purchaser, in which there was evidence showing that the note originated in a fraudulent transaction, the plaintiff had the burden of proving that it took the note in good faith.—Bank of Jordan Valley v. Duncan, Ore., 209 Pac. 149.

11.——Guarantor.—Where a payee indorsed notes before their maturity to a bank to secure a debt, the fact that she later incorporated her business and had the corporation give a note to the bank for her indebtedness did not change the position of the bank as holder of the note in due course to that of holder after maturity, though she guaranteed payment of the corporate note, as the subsequent transaction merely amounted to a renewal of the original obligation.—Anglo-California Trust Co. v. Wallace, Calif., 209 Pac. 78.

12.——Ownership.—Payee's petition, averring that defendants executed and delivered the note to plaintiff, with a copy of the note attached showing plaintiff was payee, sufficiently showed ownership as against a general demurrer.—Barton v. Pochyla, Tex., 243 S. W. 785.

13. **Carriers of Goods**—Rates.—The mere fixing of a rate by the Railroad Commission, when it is the same as stipulated in a prior contract between shipper and carrier, does not of itself invalidate such agreement.—Alexandria W. Ry. Co. v. Long Pine Lumber Co., La., 93 So. 199.

14. **Constitutional Law**—Taxation.—Where a foreign corporation was doing business in the Indian Territory under Act Feb. 18, 1901, § 3, at the time of the admission into the Union of the State of Oklahoma, and thereafter continued for more than three years prior to enactment of Rev. Laws Okla. 1910, § 7539, to do business in the State, complying with all the laws thereof relating to foreign corporations, and prior to the enactment of such statute had expended more than $2,000,000 in permanent improvements within the State consisting of pipe lines, pumping stations, steel tankage, telephone and telegraph systems, etc., the levy under such statute of a license tax of $1 for each $1000 of its capital stock employed in its business done in the State, as against a tax of only 50 cents for each $1000 imposed on domestic corporations, held violative of the equal protection clause of the Fourteenth Amendment.—Leecraft v. Texas Co., U. S. C. C. A., 281 Fed. 918.

15. **Contracts**—Compromise.—A provision of a contract for the grading of a railroad, providing that the decision of the railroad's engineer on all controversies will be conclusive on both parties, is invalid, as ousting courts of jurisdiction, unless it can be limited to questions as to the manner of construction, and, if so limited, it does not prevent recovery in a contractor's action for failure to provide the right of way on which the work was to be done.—Robert Grace Contract. Co. v. Chesapeake & O. N. Ry. Co., U. S. C. C. A., 281 Fed. 904.

16.——Consideration.—A moral obligation is not a sufficient consideration to support an executory express promise unless there has been an antecedent legal liability, which has become suspended

or barred by operation of some positive rule of law, which extinguished the remedy, but not the debt, or where the promisee has suffered some detriment in reliance upon the promise, or where the promisor has received an actual pecuniary or material benefit for which he subsequently expressly promised to pay.—State v. Funk, Ore., 209 Pac. 113.

17.—Performance. — Under contract between bank and promoter that the bank would advance money to corporation to be organized by the promoter to take over the plant of a packing company largely indebted to the bank, the mere taking possession of the plant under a contract of purchase, and making repairs, without paying any of the purchase price, was not a "taking over" of the plant."—Knight v. First Nat. Bank, U. S. C. C. A., 281 Fed. 968.

18. **Corporations**—Agency.—A corporation's stock transfer agent owes no affirmative duty to a stockholder, and incurs no personal liability by refusing to make a transfer at his request.—Nicholson v. Morgan, N. Y., 196 N. Y. S., 147.

19.——Auto License.—A foreign corporation, engaged in carrying passengers for hire by motor vehicles between a point within and a point without the State, is doing business within the State within Gen. Laws 1921, p. 734, § 37, exempting nonresidents from paying automobile license fees, and providing that foreign corporations doing business within the State shall be considered residents.—Camas Stage Co. v. Kozer, Ore., 209 Pac. 95

20.——Duty of Directors.—Whether iron mines owned by a corporation shall be operated at a loss during a business depression or closed down at a smaller loss is a purely business and economic problem, to be determined by the directors and not by the court, and the judgment of the majority must prevail in the absence of bad faith or abuse of power.—Farmers' Loan & Trust Co. v. Hewitt, N. J., 118 Atl., 267.

21.——Liability of Officers.—The use by a corporation, through its officers, of stock subscriptions paid into it for expansion purposes, for the payment of old debts, is such a wrongful appropriation as would render the corporation and its officers liable in an action by a subscriber for the cancellation of his stock and the return of his money.—Rumery v. Standard Seed Tester Co., Iowa, 189 N. W. 667.

22.——Sale.—Where the negotiations for the purchase of all the stock in a corporation at the price of $15,000 are consummated by an agreement fxing all the terms of the sale, and the vendee paid $2,000 in cash and assumed notes of the vendor amounting to $5,800, and agreed to pay the balance in specified installments, and a delivery of the corporate business is made to one of the co-purchasers, held, that a sale was completed, notwithstanding the fact that a written agreement embodying the terms of the transaction was never executed.—Korfage v. Kahrs, N. J., 118 Atl. 353.

23.——Stockholders' Resolution.—Resolution of stockholders, fixing extra compensation of managing directors, is not voidable at option of a dissatisfied stockholder (as would be a similar resolution of the board of directors), simply because passed by the votes of the stockholder directors benefited thereby; but at instance of such a stockholder it is reviewable in equity as to fairness and reasonableness, and set aside only if disadvantageous to the minority stockholder.—Booth v. Beattie, N. J., 118 Atl. 257.

24.——Stock Owners.—That all of railroad company's capital stock was in the name of a steel company with the exception of a few shares held by directors could not make it any the less a corporation.—Bethlehem Steel Co. v. Raymond Concrete Pile Co., Md., 118 Atl. 279.

25. **Damages**—Cause of Damages.—Employee who lost eye as a result of accident could recover damages for physical suffering and inconvenience, and for humiliation and mental anguish caused by disfigurement.—Arkansas Short Leaf Lumber Co. v. Wilkinson, Ark., 243 S. W. 819.

26. **Death**—Representatives' Claim.—The widow and children of one killed by assassination are not entitled to damages for his pain and suffering; his representatives alone having the right to sue for pain and suffering, under Crawford & Moses' Dig. §§ 1070, 1074, 1075, the case not being within Act March 31, 1893 (Crawford & Moses' Dig. § 1), authorizing under certain conditions parties interested in an intestate's estate to bring suit on estate claims without securing letters of administration.—Webb v. Waters, Ark., 243 S. W. 846.

27. **Divorce**—Desertion.—Act No. 269 of 1916, § 1, providing that married persons living separate and apart for seven years may sue for divorce "in the courts of the State of his or her residence", provided such residence shall have been continuous for seven years etc., is *not* unconstitutional as extraterritorial in its effect, but means that either party may sue in the courts of Louisiana of his or her residence; the phrase "of his or her residence" modifying "courts" and not "State".—Dodds v. Pope, La., 93 So., 198.

28. **Electricity**—License.—Permits granted by the Secretary of the Interior to a power company to construct and maintain an electric power transmission line across a certain Indian reservation, under Act Feb. 15, 1901 (Comp. St. § 4946), authorizing the Secretary of the Interior to grant such permission, and making the permission revocable in the discretion of the Secretary or his successor, and to construct telephone lines across the reservation, under Act March 3, 1901, § 3 (Comp. St. §§ 4191, 4240), under which the company had constructed and had for many years maintained a costly plant, were not terminated by the issuance of patents to persons who had made homestead filings on land within the reservation across which the power and telephone lines had been constructed with notice of the existence of such transmission and telephone lines, in the absence of revocation of permits by the Secretary of the Interior.—Swendig v. Washington Water Power Co., U. S. C. C. A., 281 Fed. 900.

29. **Executors and Administrators**—Public Sale.—Authority given by a testator in his will for the executrix to sell lands without an order of court does not dispense with the necessity for advertising and a public sale. It goes no further than dispensing with the necessity for an order to sell.—Turner v. Peacock, Ga., 113 S. E. 585.

30. **Explosives**—Gasoline.—The danger arising from leaving 2½ gallons of gasoline on the cement floor of a garage in the Sacramento valley, where it was spilled, in the middle of an afternoon in August, would be so apparent to a man of capacity and prudence that no express finding of negligence is required to support a judgment.—Feeney v. Standard Oil Co., Calif., 209 Pac. 85.

31. **Frauds, Statute of**—Book Charges.—In determining whether a promise was original or collateral, the manner in which the account has been charged by the creditor on his books is strong evidence, but is not conclusive.—Hines & Smith Co. v. Green, Me., 118 Atl. 296.

32.——Conveyance.—While the statute requires that land conveyed be described with such definiteness that parol proof need not be resorted to in determining what property is intended to be included, parol proof is proper to identify the land by application of the description to it.—Cohen v. Jones, Pa., 118 Atl. 362.

33.——Notes.—As between the parties to a parol contract for the sale of land, the purchaser cannot invoke the statute so as to avoid payment of a note given on the purchase price, where the vendor is ready, willing, and able to perform.—Fletcher v. Lake, Me., 118 Atl. 321.

34. **Fraudulent Conveyances**—Creditors Claims.—Where a husband and wife mortgaged their homestead to secure credit at a bank to use in paying certain debts of the husband's firm, signing the mortgage by the wife was sufficient consideration for an agreement with her husband that the proceeds should be deposited to her account, constituting a valid contract, as against the claims of the creditors of her husband after he became bankrupt.—Fuquay v. Desha Bank & Trust Co., Ark., 243 S. W. 849.

35.——Fraud.—Bulk Sales Law places on the transferee of a stock of goods the burden of proof that the transfer was free from fraud, but does not render a preference fraudulent and void, so that it was error to render judgment against garnishees on their oral answer, disclosing that the transfer to them by the defendant, who was in-

solvent, of his stock of goods, was accompanied by no reservation of benefit to himself, and that he was indebted to garnishees in a sum greatly in excess of the value of the stock of goods.—Ward & McGowen Gro. Co. v. Franklin, Stiles & Franklin, Ala., 93 So. 205.

36. **Fixtures**—Separate Building.—Where an executory purchaser of pleasure resort site on which were a hotel building, dance hall, pool room and other buildings erected a small building to house an electric light plant, and placed such plant therein for the purpose of lighting the other buildings, which was sufficient for that purpose, and which was the only means of lighting them provided, he must be deemed to have intended a permanent annexation to the realty, though such plant could have been removed and used elsewhere and was segregated from the main buildings.—Martindale v. Bowers Beach Corporation, Dela., 118 Atl. 299.

37. **Gaming**—Agency.—Persons dealing with stockbrokers in Boston, where they did business, were within the protection of the laws relative to the recovery of moneys paid as margins, though the alleged purchases and sales were made through agents of the brokers in New York.—Barrell v. Paine, Mass., 136 N. E. 414.

38. **Husband and Wife**—Torts.—A tort action between husband and wife will be dismissed, under Civil Practice Act, § 277, and Rules of Civil Practice, Rule 106, although the tort occurred, and the summons was served, prior to the intermarriage of the parties.—Newton v. Weber, N. Y., 196 N. Y. S. 113.

39. **Insurance**—Day of Grace.—Where neither the Supreme Court nor any of the Courts of Appeals had held that, under policy not effective until delivery, days of grace ran from the date of delivery, and not from the due date, though it had been held that the premium paid the insurance for one year from the date of delivery, the refusal to pay on ground that days of grace had expired without payment did not constitute a vexatious delay, justifying damages and attorney's fees.—State v. Allen, Mo., 243 S. W. 839.

40.——Full Compliance.—Production by plaintiff, in action on benefit certificate issued to her husband, of the certificate duly authenticated, and evidence that insured had died, and that plaintiff was the widow named as beneficiary in the policy which she produced, made out a prima facie case, which required the refusal of a motion for nonsuit.—Blackman v. Woodmen of the World, N. C., 113 S. E. 565.

41.——Hazardous Occupation.—Under a policy insuring against death by accidental means, which provides that the amount recoverable shall be reduced if insured is injured doing acts pertaining to an occupation more hazardous than that for which insured, it is not necessary, in order for the proviso to become operative, to show that insured had actually changed his occupation; that is, that the act in which he was engaged when injured was "habitual", as distinguished from "casual".—Ogilvie v. Aetna Life Ins. Co., Calif., 209 Pac. 26.

42.——Necessary to Comply.—In an action on an accident policy requiring a report from insured's attending physician every 30 days, if insured was disabled longer than 30 days, where plaintiff, injured February 15, testified that he neither made report nor undertook to cause his physician to make any, after a preliminary report February 25, until the following December, defendant held entitled to instruction to answer negatively an issue as to plaintiff's substantial compliance with the insurance contract.—Morton v. American Nat. Ins Co., N. C., 113 S. E. 561.

43.——Plate Glass.—Clause in policy against breakage of plate glass in window, excepting insurer from liability for damage by glazing, is inapplicable to a break after the work of glazing had been completed.—Carr v. International Indemnity Co., Calif., 209 Pac. 83.

44.——Suicide.—As respects the defense of suicide in action on a life policy, where death is self-inflicted it is presumed to have been accidental, until the contrary is made to appear.—New York Life Ins. Co. v. Watters, Ark., 243 S. W. 831.

45.—Voidable.—Provisions in a fire insurance policy declaring it void in certain contingencies, such as change in title, having been inserted for the sole benefit of the insurer, when those contingencies became actualities, the policy was not absolutely void, but only voidable at the option of the insurers, and, until they declared it void, they might, by act or deed, waive the forfeiture and continue the policy in force, in case the insurable interest in the property and the right to insurance thereunder were united and caused to exist in the same assured.—Lee Blakemore, Inc. v. Lewelling, U. S. C. C. A., 281 Fed. 952.

46. **Intoxicating Liquors** — Jurisdiction. — The Eighteenth Amendment to the federal Constitution and Volstead Act do not prevent the State court from trying offenses for violating the prohibition law.—McCoy v. State, Ala., 93 So. 230.

47.——Mash.—If defendant, indicted under Crawford & Moses' Dig. § 6160, for manufacturing alcoholic liquor, manufactured a mash intended only for feeding his stock, as his evidence tended to prove, he would not be guilty, in view of Act 1921, p. 372, No. 324, § 1, prohibiting the making of mash "fit for" (that is intended for) manufacture of alcoholic liquor; so that, in view of such evidence, instructing to find him guilty if the jury found that he made a liquor from chops, sugar and water, which contained alcohol, was error.—Milliner v. State, Ark., 243 S. W. 861.

48.——Sale.—In proceeding by State to enjoin drug store proprietor from selling intoxicating liquor, fiat of judge indorsed on petition and writ of injunction enjoining the sale of Jamaica ginger held not void, even if insufficient to specify that the injunction was against the sale of such article as a beverage.—Ex parte Olson, Tex., 243 S. W. 773.

49.——Search and Seizure.—In a prosecution for the illegal manufacture of mash for the making of intoxicating liquors, testimony of a search of the defendant's home, made three months after the finding of mash in a shanty nearby, held admissible, over the objection that the search was too remote in point of time from the finding of the mash.—Brown v. State, Ark., 243 S. W. 867.

50. **Landlord and Tenant**—Sublease.—A lessee, who had leased an apartment house from the owner for five years, subject to the right of the latter to terminate the lease on 30 days' notice, had the right to sublease for a period expiring at the end of the five years.—Simon v. Schlechter, N. Y., 16 N. Y. S. 123.

51.——Tenancy at Will.—Permission by a landlord to a tenant at sufferance to occupy the premises does not create a tenancy at will, in the absence of any agreement; but such a tenancy can be converted into a tenancy at will by an implied agreement, the existence and terms of which may be inferred from the conduct of the parties.—C. A. Spencer & Son Co. v. Merrimac Valley Power & B. Co., Mass., 136 N. E. 391.

52. **Livery Stable and Garage Keepers.**—Notice of Lien.—In a suit to enforce a lien for supplying materials and repairing an automobile, under Or. L. §§ 10272-10278, it was necessary to allege and prove a substantial compliance with all the essential requirements of the statute, and that the lien notice,, as required by Section 10273 as filed, contained every statement which must appear upon the face of the lien notice, and, where the complaint failed to allege such facts, it failed to state a good cause of suit.—Duby v. Hicks, Ore., 209 Pac. 156.

53. **Master and Servant.**—Independent Contractor.—Where owner of truck hired driver, under agreement that he should receive 25 per cent of the earnings of the truck and nothing when idle, and hired the truck and driver to a third person, the theory of general and special employment did not apply, and an award of compensation against him was unauthorized, unless he exerted some degree of control over the driver in connection with his employment in the service of the third person.—Pruitt v. Industril Acc. Commission, Calif., 209 Pac. 31.

54. **Municipal Corporations** — Certiorari. — Certiorari, brought to question the right to a salary awarded one as a patrolman by a board of commissioners on the ground that he was neither de jure nor de facto a patrolman, though recognized as such by the commissioners, held improper as

being an attack upon the title of a public office, which cannot be tried collaterally on an issue whether the person is entitled to a salary.—Cooper v. Town of Belleville, N. J., 118 Atl. 332.

55.—Conflict with State Law.—Ordinance of town of Livingston, providing for the closing of places of business on Sunday, except drug stores for the sale of drugs and medicines, is void, as inconsistent with Code 1907, § 7814, which makes it a crime to keep open stores other than drug stores for purposes of traffic on Sunday.—Town of Livingston v. Scruggs, Ala., 93 So. 224.

56.——Jurisdiction.—Where the Interstate Bridge & Tunnel Commission under Act Feb. 14, 1918 (P. L. p. 139), and Act Feb. 14, 1918 (P. L. p. 142), in conjunction with the State of New York contracted for the construction of two tunnels under the Hudson River, contractor was not obliged to comply with the building code of the city in which part of the work was being constructed, as this code was nullified as far as it required compliance by the State, for the powers of municipalities may be abridged by the State.—New Jersey Interstate Bridge & T. Com'n v. Jersey City, N. J., 118 Atl. 264.

57.—That the punishment for a violaton of Code 1907, § 7564, as amended by Acts 1915, p. 661, relating to the practice of medicine without a license, is different from that provided for violation of a municipal ordinance relating to the same subject does not render the ordinance void in toto, so as to prevent any prosecutions thereunder in the municipal court or in the Circuit Court on appeal, though the wrongful act be the same in both cases. —City of Birmingham v. Edwards, Ala., 93 So. 233.

58.——Notice.—Where a town after notice negligently failed to remove the debris from a drain causing the surface or rainwater to flood plaintiff's premises, it was liable for the resulting damage.—Pennington v. Town of Tarboro, N. C., 113 S. E 566.

59.——Texas.—A strip of land six rods wide acquired by a railroad for a right of way and used for a railroad yard, will be deemed to be acquired for railroad purposes, and therefore for public use, under Railroad Law, § 8, subd. 3, and Section 17, and as such is not assessable for street improvements, though all the land is not entirely covered by tracks, as the term "right of way" should not be limited to such right of way, tracks, and land as are appropriated to the actual operation of a company's railway, but should include tracks or land devoted to the purposes of a railroad yard (citing 7 Words and Phrases, First Series, Right of Way).—Lehigh & N. Y. R. Co. v. City of Auburn, N. Y., 196 N. Y. S. 118.

60. **Negligence** — Automobile.—An instruction that, if automobile driver knowingly attempted to drive across street car track in such proximity to street car as to be in danger of being struck before it could cross or get out of the way, he was negligent, and his wife, riding with him, could not recover, was properly refused, as omitting the requirement of a finding that the automobile was driven on the track so close to the car that the motorman could not avoid striking it by exercising ordinary care, and also as absolutely imputing the husband's negligence to the wife.—Crockett v. Kansas City Rys. Co., Mo., 243 S. W. 902

61.—Railings.—In an action by a customer against a storekeeper for injury in the latter's store resulting from a fall down a flight of steps, where there was a rail only around the opening at the top of the steps, which were less than three feet high, no inference could be drawn that the absence of a side rail created an unsafe condition. —Chapman v. Clothier, Pa., 118 Atl. 356.

62. **Principal and Agent** — Limitations.—An agent's employment to make mortgage loans, to prepare necessary papers, and attend to the settlement does not authorize him to collect the principal of the mortgage.—Colonial Trust Co. v. Davis, Pa., 118 Atl. 312.

63. **Railroads**—Contributory Negligence.—Where trees obstructed an automobile driver's view until he reached a point 14 feet from the track, from which point there was an unobstructed view for 1,400 feet, and the presumption that he stopped to look at the point where he could see was rebutted by uncontradicted testimony of the only eyewitness and by the fact that he drove in front of the near approaching train in full view, his widow could not recover for his death.—Hazlett v. Director General of Railroads, Pa., 118 Atl. 367.

64. **Sales**—Acceptance.—When the seller tenders an article unlike that described in the contract, the buyer may refuse to accept it, or return it within a reasonable time after delivery and thereby rescind the contract; but if he keeps it or uses it in a manner inconsistent with the seller's ownership, without rescinding or offering to rescind, the seller may recover the contract price less the buyer's damages—F. C. Austin Co. v. J. H. Tillman Co., Ore., 209 Pac. 131.

65.——Delivery.—A seller of logs could not be held to the exact date of the buyer's refusal to take the logs in estimating his damages, but had the right, using reasonable diligence, to find a purchaser.—Arkansas Short Leaf Lumber Co. v. Hemler, U. S. C. C. A., 281 Fed. 914.

66.——Insane Person.—In an action by a seller of goods against a buyer to recover on account defended on the ground that buyer was incapable of making a valid contract because of insanity, a charge that the burden rested on the buyer to establish the fact that at the time he entered into the contract he was insane or lacking in sufficient mental capacity to make a contract was correct.—Watson v. Banks, Ark., 243 S. W. 844.

67.——Price.—Where a contract of sale fixed the price by reference to the average price of sugar to be established by the secretary of a sugar exchange, the parties were bound by their agreement, in the absence of fraud, error, or mistake, and parol evidence to contradict the secretary's certificate was properly rejected.—Le Blanc v. Godchaux Co., La., 93 So. 201.

68.——Ratification.—Where seller promised to take an automobile heater back, if it did not operate satisfactorily, buyer, who failed to return it, could not recover on account of its unsatisfactoriness.—Pugh v. Mackie Motors Co., Iowa, 189 N. W. 674.

69.——Replevin.—In actions to replevy goods for failure of the buyer to pay the purchase price, a money judgment for any part of the purchase price will not be granted.—Gramm-Bernstein Motor Truck Co. v. Todd, Wash., 209 Pac. 3.

70. **Specific Performance**—Easements.—In an action for specific performance of oral agreement to grant a new roadway over defendant's land in consideration of plaintiff's abandoning the old road, where prior conveyances protected defendant's reversion of old road merely upon its abandonment, it was unnecessary that plaintiff tender deed to the abandoned road, especially where defendant had so acted as to recognize the abandonment.—Meyers v. Ustick, Mo., 243 S. W. 833.

71. **Taxation**—Assessments.—St. 1915, § 1061, subsec. 6, denying the owner of taxable property the right to question his assessment, because of the inclusion of property not owned by him, without presenting objections to the board of review, does not violate Const. U. S. Amend. 14, § 1, or Const. Wis. Art. 1, §§ 1, 9, relative to equality of rights and remedies for wrongs, the taxpayer having notice that the assessment rolls are open for examination, and notice of the meeting of the board of review.—Herzfeld-Phillipson Co. v. City of Milwaukee, Wis., 189 N. W. 661.

72.——Assessments.—The State tax commission has no authority to interfere with any of the agencies of assessment, from the assessor to the State Board of Equalization, for, if Rev. St. 1919, §§ 12828-12852, purport to give the tax commission such power, they violate Const. Art. 10, § 10, prohibiting the Legislature from imposing taxes on a municipal corporation or its inhabitants for municipal purposes, and making the decision of the State Board of Equalization on an assessment final, and Section 18 lodging such power in the board.—State v. State Tax Commission, Mo., 243 S. W. 837.

73. **Trusts**—Mistake.—A voluntary deed of trust, whereby a married woman with her husband's consent conveys all her property to a trustee for the benefit of herself and her minor children, may be canceled by order of court, where it appears that it was executed under a misapprehension of fact, that its provisions are ill-advised, improvident, and impossible of fulfillment, and that its cancellation is for the best interest of all concerned, and will prevent irreparable loss.—Bell v. McCoin, N. C., 113 S. E. 561.